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6 UNITED STATES DISTRICT COURT

7 DISTRICT OF NEVADA

8 CHERYL A. MANDELL, Case No. 3:10-CV-00280-RCJ-RAM

9 Plaintiff,

10 vs.

**ORDER**

11 WASHOE COUNTY ASSESSORS; WASHOE  
12 COUNTY TREASURERS,

13 Defendants.  
14 \_\_\_\_\_ /

15 This matter came before the Court at a hearing conducted  
16 on November 15, 2010, before the Honorable Robert C. Jones,  
17 United States District Court Judge. The hearing was  
18 precipitated by Defendants Washoe County Assessor's and the  
19 Washoe County Treasurer's July 22, 2010 "Motion to Dismiss, or  
20 in the alternative, Motion for Summary Judgment," (Docket 11)  
21 to which Plaintiff Cheryl A. Mandell responded, in writing, on  
22 August 30, 2010 (Docket 16) and on September 29, 2010 (Docket  
23 17).

24 **I. The Plaintiff's Cause of Action**

25 The Plaintiff filed her "Civil Rights Complaint Pursuant  
26 to 42 U.S.C. § 1983," (Docket 7) in this action, naming

1 the Washoe County Assessor and the Washoe County Treasurer as  
2 the sole defendants. From the language of the Plaintiff's  
3 Complaint, it appeared that she was of the belief that the  
4 Defendants had violated her constitutional rights in the  
5 performance of their duties with respect to real estate  
6 assessments and property tax collections. In particular, the  
7 Plaintiff's action revolved around payments made in connection  
8 with residential property located at 3410-4th Street, in  
9 Sparks, Nevada, which was sold through foreclosure.

10 **II. The Defendants' Response**

11 In response to the Plaintiff's Complaint, the Defendants  
12 defended by contending that the Plaintiff had failed to state a  
13 claim upon which relief could be granted. (Docket 11). The  
14 Defendants' position was based in the belief that the Plaintiff  
15 had sued entities not capable of being sued, that the Plaintiff  
16 had failed to include individual capacity claims, that the  
17 Plaintiff had failed to assert official capacity claims and  
18 that, because of the failure to state a claim upon which relief  
19 could be granted, that the Court should decline jurisdiction  
20 over any supplemental state law claims. The Plaintiff  
21 responded with a detailed listing of expenses she incurred.  
22 (Docket 18).

23 **III. The legal standard associated with a failure to state a  
24 claim upon which relief could be granted**

25 A motion to dismiss under Federal Rule of Civil Procedure  
26 (FRCP) 12(b) (6) will only be granted if it appears beyond doubt

1 that the plaintiff can prove no set of facts in support of his  
2 claim which would entitle him to relief. *Lewis v. Tel.*  
3 *Employees Credit Union*, 87 F.3d 1537, 1545 (9th Cir. 1996).  
4 The court's review is limited to the complaint, and all  
5 allegations of material fact are taken as true and viewed in  
6 the light most favorable to the non-moving party. *In re Stac*  
7 *Electronics Securities Litigation*, 89 F.3d 1399, 1403 (9th Cir.  
8 1996). It is generally true that a motion to dismiss should not  
9 go beyond the complaint; however, the Court can take judicial  
10 notice of other court actions without converting a motion to  
11 dismiss into a motion for summary judgment. *FRE 201; MGIC*  
12 *Indem. Corp. v. Weisman*, 803 F.2d 500, 504 (9th Cir.1986).  
13 However, conclusory allegations and unwarranted inferences are  
14 insufficient to defeat a motion to dismiss. *Id.*, at 1403. Nor  
15 do courts assume the truth of legal conclusions merely because  
16 they are cast in the form of factual allegations. *W. Mining*  
17 *Council v. Watt*, 643 F.2d 618 (9th Cir. 1981). Dismissal for  
18 failure to state a claim is proper only if it is beyond doubt  
19 that plaintiff can prove no set of facts in support of his  
20 claim that would entitle plaintiff to relief. *Williamson v.*  
21 *Gen. Dynamics Corp.*, 208 F.3d 1144, 1149 (9th Cir. 2000).

22 While allegations of a pro se complaint are held to a less  
23 stringent standard than formal pleadings drafted by a lawyer,  
24 *Haines v. Kerner*, 404 U.S. 519 (1972), sweeping conclusory  
25 allegations will not suffice. *Leer v. Murphy*, 844 F.2d 628,  
26 634 (9<sup>th</sup> Cir. 1988).

IV. The legal standard associated with a motion for summary judgment

Further, a motion to dismiss can be converted into a motion for summary judgment if matters outside the pleadings are presented and not excluded by the court. FRCP 12(d).

FRCP 56(c) provides that a court must enter summary judgment when "there is no genuine issue as to any material fact and . . . the moving party is entitled to a judgment as a matter of law." FRCP 56(c).

The moving parties bear the burden of informing the court of the basis for their motion, together with evidence demonstrating the absence of any genuine issue of material fact. *Celotex Corp. v. Catrett*, 477 U.S. 317, 323 (1986). "A genuine issue of material fact exists only where 'there is sufficient evidence favoring the nonmoving party for a jury to return a verdict for that party.'" *Dribeck Importers, Inc. v. G. Heileman Brewing Co., Inc.*, 883 F.2d 569, 573 (7th Cir.1989) (quoting *Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242, 249 (1986)). A material fact is one that may affect the outcome of the action. See *Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242, 248 (1986). The evidence, and reasonable inferences that may be drawn from it, must be viewed in the light most favorable to the non-moving party. *Clicks Billiards, Inc. v. Sixshooters, Inc.*, 251 F.3d 1252, 1257 (9th Cir. 2001).

Once the moving party has met its burden, the nonmoving party "must do more than simply show that there is some

1 metaphysical doubt as to the material facts." "This burden is  
2 not satisfied with 'some metaphysical doubt as to the material  
3 facts,' ... 'by conclusory allegations' ... by 'unsubstantiated  
4 assertions,' or by only a 'scintilla' of evidence." *Matsushita*  
5 *Elec. Indus. Co. v. Zenith Radio Corp.*, 475 U.S. 574, 586  
6 (1986)); *Lujan v. National Wildlife Fed'n*, 497 U.S. 871, 871-73  
7 (1990); *Hopper v. Frank*, 16 F.3d 92, 97 (5th Cir.1994); *Davis*  
8 *v. Chevron*, 14 F.3d 1082, 1086 (5th Cir.1994). Rather, the  
9 non-moving party must "come forward with 'specific facts  
10 showing that there is a genuine issue for trial.'" *Matsushita*,  
11 *supra*, 475 U.S. at 584 (quoting Fed. R. Civ. P. 56(e)).

12 Furthermore, summary judgment may be granted, despite the  
13 presence of some factual disputes, if resolution of those  
14 disputes could not change the final result. See also *Brunet*,  
15 *Redish*, & *Reiter*, *Summary Judgment: Federal Law and Practice* §  
16 6.04 (2d ed.2000).

17 **V. The pleadings and hearing before the court**

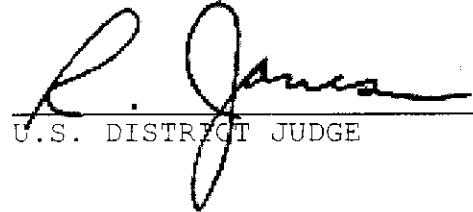
18 In response to the Defendants' "Motion to Dismiss or in  
19 the alternative, Motion for Summary Judgment," the Plaintiff  
20 provided no arguments in response to the arguments presented by  
21 the Defendants. In Court on November 15, 2010, the Defendant  
22 indicated her belief in her continuing an ownership interest in  
23 the property in question in this case and her belief that she  
24 had continued to pay ad valorem property taxes on the property.  
25 The Plaintiff concurred with the Court's statement that a  
26 property owner such as the Plaintiff is obligated to pay

1 property taxes on that property.

2 **VI. Order**

3 Good cause appearing, and based upon Plaintiff's own  
4 admissions, the Plaintiff's "Civil Rights Complaint Pursuant to  
5 42 U.S.C. sec. 1983" (Docket 7) is dismissed, with prejudice.  
6 Each party shall bear their own costs and fees associated with  
7 this matter.

8 Dated this 29th day of November, 2010.

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11 U.S. DISTRICT JUDGE  
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